

BEFORE THE STATE OF MONTANA
SUPERINTENDENT OF PUBLIC INSTRUCTION

DAWN HANSON,)	
Appellant,)	
)	<u>DECISION AND ORDER</u>
v.)	
)	OSPI 21-82
SCOBEE SCHOOL DISTRICT NO. 1,)	
Respondent.)	

This is an appeal by tenured teacher Dawn Hanson (hereinafter referred to as Appellant) from the Findings of Fact, Conclusions of Law and Order rendered by the Hearing Officer sitting in place of the Daniels County Superintendent of Schools regarding the dismissal under contract of a tenured teacher for violation of explicit and specific School Board directives.

From the record, as defined in Section 2-4-614 MCA, and the Uniform Rules of School Controversy it appears that Appellant had been a teacher in the Scobey School District for over eleven years. On November 9, 1981 Appellant applied for twelve (12) days of personal leave to visit her daughter. This leave period extended from December 21 through January 15, 1982, excluding such days as are permitted for appropriate holiday vacation.

The collective bargaining agreement which Appellant has been a part of provides for only two (2) days of personal leave and for such leave not to be granted immediately preceding or following a vacation period. Because the requested leave fell immediately before and after Christmas vacation, Appellant changed her request to that of a general leave status.

According to the collective bargaining agreement, general leave status shall be granted at the sole discretion of the School District.

On November 23, 1981, Appellant met with the School Board of Trustees and the School Superintendent. The School Superintendent denied the request for the requested leave. The School Board unanimously approved the School Superintendent's decision and disapproved the request for general leave of Appellant. One of the several factors influencing the School Board's decision not to allow the requested leave was because the School Board felt that the loss of a

normal instructor for 12 days out of 180 teaching days or about 7% of the students' school year would not be appropriate leave, and would be detrimental to the students' education.

On December 16, 1981, Appellant sent a letter to the Superintendent and to the members of the Board of Trustees stating that she was disobeying their denial of her request for general leave and that she would take the requested days without their approval. On December 17, 1981, the School Superintendent wrote Appellant a letter warning her of the consequences of her decision advising Appellant of her rights and notifying Appellant of the date on which recommendation of termination would be made to the School Board if she chose to take the unprivileged and ungranted leave of absence. The Superintendent requested Appellant to reconsider her decision and not take the leave for those days.

Appellant, in direct contravention of the specific and explicit order of the School Board and fully aware of the consequences of her actions, did not meet with her classes on December 21 and 22, 1981 nor on January 4 through the 15th, 1982. A total of twelve (12) days of unexcused absence was taken. The reason given for her absence was a trip to Spain. No emergency reasons were given.

On January 19, 1982, the Board of Trustees unanimously voted to dismiss Appellant for violating the adopted Board policies GBBA listed as joint exhibit #2, for failing to meet and instruct her assigned classes on the above-described dates and in contravention of the Board's explicit order of December 17, 1981. The Findings of Fact made by the County Superintendent indicated Appellant was given sufficient notice in advance of her departure to fully contemplate her decision. She understood the explicit directions of the School Board and the consequences of her action in the event she chose to disregard the directions of the School Board.

Appellant raises several issues on appeal:

1. The County Superintendent made no finding as to whether the job description was, in fact, "adopted policy of the trustees."
2. The County Superintendent made no finding that Appellant had violated adopted policies of the Trustees.

3. The County Superintendent did not find Respondent had good cause to dismiss Appellant.
4. The School Board failed to consider whether less severe discipline might have been appropriate.
5. The appeal to the County Superintendent was pursuant to Section 20-4-207 MCA. The collective bargaining agreement between the Scobey Education Association and the School Board was not before the County Superintendent and should not have been considered by her.

In the Findings of Fact made by the County Superintendent, the County Superintendent had incorporated by reference several exhibits and other material as outlined in the Findings. A review of the record of this administrative agency hearing includes the following:

- a. all pleadings, motions, intermediate rulings;
- b. all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;
- c. a statement of matters officially noticed;
- d. questions and offers of proof, objections, and rulings thereon;
- e. proposed findings of exception;
- f. any decision, opinion, or report by the hearing examiner or agency member presiding at the hearing;
- g. all staff memoranda or data submitted to the hearing examiners or members of the agency as evidence in connection with their consideration of the case. See Section 2-4-614 MCA and the Rules of School Controversy Section 10.6.117 Administrative Rules of Montana.

The explicit finding made in the record that the job description was in fact an adopted policy of the trustees is stated in subsection 2 of exhibit #1, and it states in part:

(2) The teacher agrees to comply with the provisions of state law relating to teachings and with all adopted rules, regulations and policies of the Board of Trustees of the School District, which rules, regulations and policies are made a part of this contract by reference...

This State Superintendent has consolidated the remaining issues presented by Appellant into one: Whether the dismissal of Appellant

was proper with regard to adopted Board policy, consideration of less severe discipline, proper procedure and contract law. This State Superintendent has adopted the Standard of Review set out by the Montana Administrative Procedures Act. See Section 2-4-704 MCA and Section 10.6.125 Administrative Rules of Montana.

As was in the case of the Attie Blevins v. Daniels County School District #1, OSPI 20-82, there was no dispute between the parties as to the factual allegations, only a legal dispute as to the authority and the harshness of the discipline imposed. This State Superintendent has rendered two prior decisions on discipline cases pursuant to Section 20-4-207 MCA, See Attie Blevins, OSPI 20-82, dated August 16, 1982, and Noel D. Furlong v. School District No. 5, OSPI 13-81 dated April 13, 1982. In those cases I specifically held that a Board of Trustees may discipline a teacher under Section 20-4-207 MCA for an intentional violation of Board policy or directive. In Furlong the discipline was not upheld because there was a failure to find an intentional violation of Board policy or directive. On the other hand, in Blevins the opposite was true; there was a policy and a directive that were very precise. Blevins was given a definite decision on her request, and that decision was affirmed by the District Superintendent. Despite clear policy and clear directive and a firm decision of the Superintendent and of the Board of Trustees, the Appellant chose to violate that policy. In Blevins, I held:

This clear policy and clear, intentional, wilfull violation by the teacher in this case, distinguishes it from the Furlong matter and requires that the decision of the County Superintendent be affirmed. See Blevins page 3.

This case is similar to Blevins. Appellant here knew the clear and precise School Board directive and policy with regard to the requested leave. A teacher's contract, a school board policy, joint exhibit 112, as well as the clear directives given in writing by the Superintendent in this matter and the Board of Trustees **prior** to the actual taking of leave was known to Appellant.

Appellant acknowledges that on December 15, 1981, she had full knowledge and had fully contemplated the decision of the Superintendent and the Board of Trustees stating, "I have decided to put the needs and desires of my family ahead of my job."

The District Superintendent followed up a letter of December 17, 1981 once again requesting that Appellant reconsider her decision and informing her in writing that she would be subject to discipline including dismissal under Section 20-4-207 Montana Codes Annotated and specifically outlined the procedure of what would occur if Appellant chose to take that particular leave. In part the Superintendent stated in the letter:

"It is, however, my duty to inform you that, should you fail to meet and instruct your class in the location and at any, or all of the times for which you have unsuccessfully requested leave, namely the 21st and 22nd of December 1981, and the 4th through the 8th and the 11th through the 15th of January 1982, I shall recommend to the school board that your employment with Scobey School District #1 be terminated, effective January 19, 1982. Mr. Larry Mahler, Scobey School Board chairman, will call a special meeting of the school board at 8:00 p.m. on January 18, 1982 in order to decide what action should be taken on my recommendation. I will recommend your dismissal based upon your failure, indeed flagrant refusal, to follow the adopted policies of the board by not meeting and instructing your class and by deliberately contravening the reasonable and proper orders of the school administration and the board that you do so meet and instruct your class."

The District Superintendent went on to discuss Appellant's rights with regard to due process in the event she chose to take the leave.

The District Superintendent, after the personal leave was taken, followed up precisely the instructions outlined in the December 17, 1981 letter with regard to his recommendation to the Board of Trustees of dismissal and the clear facts of her wilfully and intentionally violating adopted policies of the board by insubordinately refusing to meet and instruct her third grade class.

The Board of Trustees met, allowed an opportunity for the parties to present evidence, found that there was no emergency authorization or reasons for the leave and pursuant to the provisions of Section 20-4-207 MCA dismissed Appellant. In a clear directive of January 19, 1982 the Chairman of the board stated in a letter to Appellant:

The board, by its unanimous decision indicated that the charges had been proven, that they considered the violation to be of a sufficient gravity as to merit dismissal. In particular, board members mentioned that: (1) you had already been heard by the board concerning the merits of your application for leave (2) that your appeal had been denied, but that you made no attempt to

seek recourse through the grievance procedure and binding arbitration, (3) that teachers have a right to ask for a leave, but that under the contract the board has full discretion to grant or deny and that the board's decision must be respected, (4) that the youngsters suffered a loss by your untimely and unauthorized absence from the classroom, and (5) that you had made a choice between your job and your family in full recognition of the consequences.

Each one of the exhibits made reference to in this Decision and Order was made a part of and incorporated into the Findings of Fact and the record. The hearing officer concluded on the basis of the record and the findings made that the Board of Trustees acted within the limits of Montana law and the collective bargaining agreement to dismiss Appellant from her teaching position. Appellant left "regardless" of the fair and full warning of the consequences. The Board of Trustees called a special meeting to consider what action to take in the matter and it was their unanimous decision to terminate her employment. The evidence in the record indicates that the School Board fully considered intentional violation, the consequences on the efficiency and operation of the School District and the merits of dismissing this particular teacher under Section 20-4-207 MCA. The Appellant chose to appeal the School Board decision. The hearing officer accepted jurisdiction. The procedure was correctly followed.

Local School Boards must maintain control on the administration of the School Districts' business. They are elected by popular vote and are chosen by reason of their standing in the community, sound judgment, and their interest in the educational development of our young generation. They know and understand the parties and know best the circumstances involved in their School District.

Therefore the Decision of the Hearing Officer is affirmed.

DATED December 29, 1982.